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2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

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6 In the Matter of:

7 EAST BROADWAY MALL, INC., Main Case No.
8 Debtor. 19-12280-dsj

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11
12 United States Bankruptcy Court
13 One Bowling Green
14 New York, New York

15
16 June 14, 2023
17 10:00 AM

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21 B E F O R E:
22 HON. DAVID S. JONES
23 U.S. BANKRUPTCY JUDGE

24
25 ECRO: ELECTRONIC RECORDING

1
2 1) Motion Filed by the United States Trustee to Convert this
3 Chapter 11 Case to a Chapter 7 Case
4

5 Objection Filed by Bank of Hope
6

7 2) Amended Motion Filed by the Debtor to Approve Debtor's
8 Disclosure Statement; Approve Solicitation Procedures, Forms of
9 Ballots and Fixing Deadline for Filing Objection to
10 Confirmation of Plan
11

12 Objections Filed by the United States Trustee and Bank of Hope
13

14 3) Motion Filed by Bank of Hope to Approve Entry of Order
15 Approving (I) The Adequacy of The Third Amended Disclosure
16 Statement For The Third Amended Plan of Liquidation; (II)
17 Solicitation of Votes to Accept or Reject The Third Amended
18 Plan of Liquidation and Notice of Procedures; (III) Forms of
19 Ballots and Notices in Connection Therewith; And (IV) Certain
20 Dates with Respect Thereto
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22 Objection Filed by the United States Trustee
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1 P R O C E E D I N G S

2 THE COURT: Good morning everyone, it's Judge Jones.
3 We're here for a 10:00 a.m. Zoom hearing in East Broadway Mall,
4 number 19-12280, with three motions calendared for today. One
5 is a motion that's been around for some time by the U.S.
6 Trustee to convert this case to Chapter 7 and then we have
7 competing motions for approval of competing disclosure
8 statements in connection with competing plans. One by the Bank
9 of Hope and one by the debtor.

10 Let me go ahead and actually take appearances because
11 of how many moving parts there are.

12 So who's here for debtors today?

13 MS. KEENAN: Sally Keenan for the debtor.

14 THE COURT: Great.

15 And how about for Bank of Hope?

16 MR. SULLIVAN: James Sullivan, Windels Marx Lane &
17 Mittendorf, counsel for Bank of Hope.

18 THE COURT: Great.

19 And let's see, U.S. Trustee?

20 MR. BRUH: Good morning, Your Honor. Mark Bruh for
21 United States Trustee.

22 THE COURT: Okay.

23 And does anyone else expect to be appearing today?

24 Oh.

25 MR. KASS: Good morn-- good morning, Your Honor.

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1 Zachary Kass on behalf of the City of New York.

2 THE COURT: Right. Nice to hear you, Mr. Kass.

3 That's right, I was told you had camera problems, so you're
4 here audio only, which is fine.

5 Okay. Any other active participants expected today?

6 MR. SOONG: Good morning, Your Honor. My name is
7 Arthur Soong. It is my first time on. I'm the attorney for
8 the proposed new tenant, Broadway East Group.

9 THE COURT: Great. Welcome.

10 MR. SOONG: Thank you.

11 THE COURT: Okay. So there have been a lot of late-
12 breaking developments sort of shortly before midnight. A
13 filing by the debtors responding to objections to their
14 proposed -- or disclosure statement and -- I don't know what to
15 call it, but a supplemental or modified or third amended, I
16 think it is, disclosure statement filed by Bank of Hope. And
17 so I've quickly reviewed those to the best of my ability. Let
18 me just tell you my initial take coming in and then I'm going
19 to want to just hear from everybody, but I think it's best just
20 not to hide the ball on you.

21 I think -- first off, with respect to the motion to
22 convert of the U.S. Trustee, I believe that was pretty much
23 based on -- that was filed some time ago, and it was largely
24 based on failure to file monthly operating reports. That
25 deficiency was rectified, although I think debtor is now behind

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1 again, based on my review. I am -- I feel like there's been
2 enough water under the bridge that it probably is going to make
3 sense after hearing from people to ask the U.S. Trustee to
4 consider withdrawing it and, if not, quite possibly denying
5 that motion. As I sometimes do, Mr. Bruh knows without leave
6 to reinstate, joined by supplemental briefing because I think
7 the motion is just not aimed at the current status of the case.
8 So it doesn't make sense to proceed with it or grant it in the
9 current circumstances. So that's kind of the easiest -- easier
10 piece in my mind and I'll give Mr. Bruh a chance to -- and
11 anyone else a chance to speak to that.

12 And then with regard to the disclosure statements,
13 I -- I have some real concerns about the debtors, in terms of
14 just -- it's hard for me to see that it's tied to a confirmable
15 plan for various reasons, some of which the U.S. Trustee
16 identified. I also noticed it's premised on a substantial loan
17 commitment, but that commitment by its terms expired last
18 August. So I think it would -- I just don't see a viable
19 pathway going forward, so it's -- so I don't think I could --
20 be in a -- in a position to approve the debtor's disclosure
21 statement at this time.

22 And then with regard to the Bank of Hope disclosure
23 statement, it's clear that there's been a lot of progress and a
24 lot of movement and negotiation, which is great. There are so
25 many moving pieces and so much came in at a -- like I think

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1 literally just before midnight last night, that I -- my
2 inclination coming in is that I'll probably want to adjourn the
3 hearing on Bank of Hope's disclosure statement, really to --
4 if -- at least if anyone wants to have an opportunity to review
5 and comment, I would think debtor likely wants that and the
6 U.S. Trustee wants that and I am very sympathetic to that. I
7 also don't see a compelling reason to just rush through at the
8 last minute. I also, frankly, would be more comfortable having
9 time to reflect.

10 The other thing I would say is that the -- I do want
11 to hear from Bank of Hope about the state of play and what the
12 updates are because I think that sounds promising. I'm also
13 concerned to the extent you're relying on (indiscernible), sort
14 of further changes to the approach that aren't -- that are only
15 going to be revealed in a plan supplement. That seems
16 concerning to me. It's my impression from the review of the
17 papers is that the possible changes that would be embodied in
18 your intended plan supplement would be substantive enough that
19 it's a little -- that it's kind of unfair to the creditor
20 universe to ask them to sign off on something while awaiting a
21 fundamental batch of changes in a plan supplement. But that is
22 something I don't know about, that's just a concern or a
23 suspicion I have that you can address.

24 Okay, so let me do the following -- I guess I'll just
25 go through the lead protagonist in the order of issues I just

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1 said.

2 Let me first turn to Mr. Bruh on the motion to
3 convert. How do you want to proceed and -- on that?

4 MR. BRUH: Thank you, Your Honor. Mark Bruh for the
5 United States Trustee. Your Honor is right to point out that
6 the motion was on, it was off, it's back on, the issues have
7 changed in the case. I think the outstanding issues are the
8 operating reports, the second one will be due tomorrow, so the
9 debtor will be two behind. I did not know how today's hearing
10 was going to play out, so I was going to suggest that we hear
11 it at the end to see, perhaps, it might have some legs to go
12 forward. If not, it would be our position, if the Court is
13 inclined to deny it, to deny it without prejudice for us to
14 renew.

15 THE COURT: Yeah, okay. Your audio tailed off a
16 little. You said denied without prejudice and then a few words
17 after it without prejudice --

18 MR. BRUH: Oh, I'm sorry, I --

19 THE COURT: What were those words?

20 MR. BRUH: Your Honor, I'm in the courthouse and I
21 can -- I'm having a low bandwidth issue, so maybe --

22 THE COURT: Right.

23 MR. BRUH: -- I'll just -- if the Court allows me to
24 turn off my video for a little bit, I can --

25 THE COURT: Okay, but -- yeah, that's fine.

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1 MR. BRUH: I said denied without prejudice with --
2 with the ability to renew, Your Honor.

3 THE COURT: Okay, yeah and -- and I think Mr. Bruh
4 knows from experience, that's a thing I'm predisposed to allow
5 on -- on these sort of motions to convert, particularly by the
6 U.S. Trustee's Office, where they allow things to play out and
7 grant -- and allow continuances and then events change out from
8 under them, so.

9 Okay, so let's -- let's do this, I'm just going to
10 conditionally do that. I'm going to -- subject to modification
11 if events at the hearing warrant, which I don't expect they
12 will, I'm going to deny the motion of the U.S. Trustee to
13 convert the case, without prejudice to renewal at a later time
14 in the discretion of the Office of the U.S. Trustee, but any
15 such renewal would need to be accompanied by supplemental
16 submission addressing whatever the state of play in the case is
17 at the time of the reinstatement, okay?

18 So, Mr. Bruh, you can just -- unless something changes
19 today that makes us revisit that, you can submit a proposed
20 order to that effect which will be pretty simple, I think
21 that's -- you've dealt with pretty similar orders, and so I
22 think you can just get me a proposed order. Does that work for
23 you?

24 MR. BRUH: It does, Your Honor. Thank you.

25 THE COURT: Okay. And --

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1 MR. BRUH: Can you hear me clearly now or --

2 THE COURT: Yeah, I can hear you fine, thanks.

3 Yeah --

4 MR. BRUH: Okay.

5 THE COURT: -- and I'll tell you, Mr. Bruh, it wasn't
6 bad, I think I -- just literally your voice trailed off for a
7 minute. It wasn't like a true --

8 MR. BRUH: I'm getting a low bandwidth issue in the
9 courthouse, so --

10 THE COURT: Yeah.

11 MR. BRUH: (Indiscernible).

12 THE COURT: Yeah, for the benefit of folks, the U.S.
13 Trustee's office relocated from a remote location to the
14 mothership here, the bankruptcy courthouse and it's beautiful,
15 historic, terrific, and plagued with low Wi-Fi signal strength,
16 so that's an issue.

17 Okay, so --

18 MR. BRUH: Thank you.

19 THE COURT: -- so that resolves of the U.S. Trustee's
20 motion to convert, unless there's reason to revisit that as the
21 hearing goes on.

22 And, Mr. Bruh, I'll count on you to alert me if you
23 want -- if you want to revisit the -- that in light of anything
24 you hear.

25 Okay, so let's turn to the debtor's disclosure

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1 statement motion, I mean -- so, Ms. Keenan, I'll give you --
2 whatever you want to tell me about that, and if you want to try
3 to dissuade me from my initial reaction, that's fine and -- I
4 see you shaking your head no, that's great, but any -- I'll
5 give you -- I'll sort of give you general air time for anything
6 else you want to say while you've got the floor.

7 MS. KEENAN: I just want to say that the debtor -- it
8 was very important to the debtor to file a plan, to put out
9 there what it was offering because it's never given any -- no
10 one's recognizing it from the Bank or the City. So we filed
11 the plan and the disclosure statement just so that the outline
12 of what they wanted to offer would be memorialized. And also,
13 when the U.S. Trustee filed its objection and raised a couple
14 of issues, we filed yesterday the limited response to the U.S.
15 Trustee's objection, basically talking about the financing and
16 the joint partners who had indicated that they support the
17 debtor and they are well healed and are going to do whatever
18 they can to assist them in this -- in this journey, which
19 they're not going to give up on, obviously. So that's all --

20 THE COURT: Okay.

21 MS. KEENAN: -- I wanted to say. And I don't oppose
22 your -- I understand your ruling, so, no problem.

23 THE COURT: Okay, that's great. So I'll just say that
24 I did review the debtor's limited response to the U.S. Trustee
25 objection. That appears at Docket No. 174. When I said

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1 earlier -- I noted that the financing commitment had expired in
2 August of 2022. That's -- that was part of the documentation I
3 was reviewing. I completely understand your client's desire to
4 put something affirmative out there to demonstrate what it is
5 the client's trying to do. Nevertheless, I'm going to adhere
6 to what I'll call, my tentative ruling, at the top of the
7 hearing, which is that the debtor's motion to approve its
8 proposed disclosure statement, coupled with -- in connection
9 with its proposed plan, is denied for failure to provide
10 sufficient information to complete -- to permit sufficient
11 evaluation of the plan, coupled with un-confirmability in its
12 current state because it's not backed by current and viable
13 financing nor is it -- nor is there a basis to determine that
14 the debtor has reached or can reach an agreement with the
15 landlord that would be necessary to permit it to go forward.

16 Okay, so I'm -- I will --

17 And, Ms. Keenan, I think I'll just have us enter a
18 little -- generate a little order referring to the oral ruling,
19 so I won't ask you to submit an order.

20 MS. KEENAN: Okay.

21 THE COURT: But --

22 MS. KEENAN: Thank you.

23 THE COURT: -- it'll just memorialize that ruling.

24 Okay?

25 All right, so then we're down to the Bank of Hope's

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1 disclosure statement motion, and I am really delighted to have
2 a tenant identified and present. It's Broadway East, that's
3 great.

4 THE COURT: Mr. Song (ph.) -- do you say [Suu-ng]?
5 How do you pronounce your name, again?

6 Oops, sorry, you're muted. I'm putting you on the
7 spot.

8 MR. SOONG: Sorry, guys. It's [Suu-ng]. It's as if
9 it's a "u", but it's [Suu-ng].

10 THE COURT: Oh, [Suu-ng]. Okay. Thank you. Got it.

11 Okay, so let me turn to Mr. Sullivan --

12 Sorry, all I wanted you to do was help me with
13 pronouncing your name correctly, Mr. Soong. Thank you very
14 much.

15 Okay. So, Mr. Sullivan, -- I mean, you heard my --
16 why don't you just first give me an update on exactly where we
17 are, what's nailed down, and what remains to be nailed down.

18 MR. SULLIVAN: Thank you, Your Honor. So yeah, what
19 we filed yesterday was an effort to address some of the
20 concerns that were raised by the U.S. Trustee's office in their
21 objection to our disclosure statement. So we didn't actually
22 file it as like -- the plan and disclosure statement that we
23 filed with our motion was the third amended plan and disclosure
24 statement.

25 So what we filed last night were just proposed

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1 modifications to it in light of our desire to try and address
2 as many of the U.S. Trustee's concerns that we thought we'd be
3 able to -- just for purposes more of discussion at today's
4 hearing, with the understanding that whatever modifications you
5 might request or desire, that we would incorporate into --
6 maybe it would be a fourth amended, I don't know, but and
7 then --

8 THE COURT: Okay.

9 MR. SULLIVAN: -- ask for a form of order.

10 THE COURT: Got it. Do you have any objection to --
11 I -- my carrying this motion to future date so that you can
12 really sort of discuss the modifications and responses you've
13 come up with the -- with the U.S. Trustee's office, try to get
14 consensus on them, and then make further modifications as
15 needed so we have a cleaner slate that's actually going
16 forward? I will tell you, I plan to spend as much time as we
17 need today to make as much progress as we can, but I kind of
18 feel like it's so many moving pieces that, ultimately life's
19 going to be better if we pause, take a breather, fix as much as
20 we can, and then go forward at a future hearing date.

21 MR. SULLIVAN: Your Honor, like if that's what you
22 want, I mean, we're certainly happy and willing to do that.
23 Obviously, our desire is to move the case as quickly as
24 possible. To the extent that we can, I'd like to address as
25 many of the issues and concerns that either the U.S. Trustee's

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1 office has or Your Honor has or anyone else has --

2 THE COURT: Yes.

3 MR. SULLIVAN: Today --

4 THE COURT: I -- I hear you. Let's definitely have
5 the substantive conversation. I guess, I won't make any final
6 decision, but I'm sort of concerned about blazing ahead, just
7 because it smells to me like there's a lot of balls in the air,
8 but maybe you'll persuade me, no, no, it's all good. So let me
9 let you proceed as you wish.

10 MR. SULLIVAN: Okay. One happy thing I can report and
11 I'm sure everyone on the call probably knows about it, I don't
12 know if Your Honor would, but so this morning we filed an
13 escrow agreement, which relates to a deposit of one million
14 dollars that the proposed new tenant paid into my firm's escrow
15 account on June 9th. And the escrow agreement has language in
16 it that locks in the proposed new tenant much more so than what
17 has previously been for, Your Honor. So I just wanted to point
18 that out. So it was filed on the docket, and just a little
19 while ago, so I'm sure Your Honor has not had a chance to --

20 THE COURT: I had --

21 MR. SULLIVAN: -- to review it, even if it's --

22 THE COURT: My -- I will just tell you I have the
23 dock-- I opened the docket at about -- on -- in my courtroom
24 computer at about 9:45, and it wasn't there. It doesn't auto-
25 refresh, so I just refreshed, and now it's there at 10:20, so

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1 this is --

2 MR. SULLIVAN: Okay.

3 THE COURT: -- extremely recent, but that is a good
4 development.

5 MR. SULLIVAN: Our desire was to have filed it
6 yesterday, but we were trying to track down the final
7 signature. And unfortunately, we did not get that 'til this --
8 early this morning and so by the time we got it on file,
9 obviously it was probably too late for Your Honor to see it.
10 But it is -- we did reference it in our -- in our papers that
11 this was something that we were in the effort -- in the process
12 of finalizing.

13 So -- so my statement today is we have in fact
14 finalized it, so that's a good development as far as we're
15 concerned. We did receive the deposit of one million dollars.
16 That's a positive development, I would say. And so I think
17 we're ready to move forward. I think the proposed new tenant
18 is ready to move forward and so to the extent that there are
19 any delays, I would just request that they be -- not be too
20 long of a delay, just do it (indiscernible) execution.

21 THE COURT: Yeah. Now you've got bandwidth issues
22 too, so you're getting a little sound distortion, so -- but, I
23 understand -- I mean, you're saying you don't want a long
24 delay. I will tell you, I'm away at a judicial conference and
25 then another little trip, so my next available date

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1 realistically would be like the June 29th and then I think July
2 6th. So I have in mind, if I stick to my guns on pushing this
3 back, probably one of those dates or some --

4 MR. SULLIVAN: Okay.

5 THE COURT: -- or some other available date around
6 those times that you could get from Ms. Calderon. But I agree
7 with you, I don't want to bog the case down, you have a tenant,
8 you have money on the line, you have an ambition to move
9 things, that's great. At the same time, the case has been
10 kicking around since 2019 and I will tell you one of my
11 favorite little office worker signs I've ever seen said, you're
12 procrastination is not my crisis. And so -- so -- that was at
13 a school -- so I'm kind of having that reaction.

14 MR. SULLIVAN: I hear you.

15 THE COURT: Okay. So go ahead. But -- but yeah, keep
16 telling me about where things are -- I don't know what all you
17 need. I guess really it seems to me what I know I need to hear
18 about is where things stand with the City and the tenant --

19 MR. SULLIVAN: I think that's the right --

20 THE COURT: -- as far as compromise terms, working out
21 the arrearages with the City, financing going forward, and so
22 forth.

23 MR. SULLIVAN: I think that would probably be the -- a
24 good place to move to next, Your Honor, because it is a fairly
25 significant issue as where things stand with the City and with

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1 the proposed new tenant in terms of the lease. We do have a --
2 the term sheet that was attached to our motion for approval of
3 the third amended plan and disclosure statement did have more
4 signatures on it. It was like -- it was a little bit better
5 than the one before that, but I think Your Honor is probably
6 more interested in finding out what's the status of the actual
7 lease and so I would -- if Mr. Kass is on, I would -- or -- or
8 Ms. Koenig is on, I would make --

9 THE COURT: Yeah, Ms. Koenig is here with video on and
10 Mr. Kass, I believe is here, audio only. So I see them both.
11 Is that an invitation --

12 MR. KASS: Your Honor?

13 THE COURT: Yeah, go ahead, Mr. Kass.

14 MR. KASS: I apologize for my continuing technological
15 ineptitude, so --

16 THE COURT: That's quite fine, Mr. Kass. And you're
17 always a valuable contributor in any form, so go right ahead.

18 MR. KASS: I appreciate that, Your Honor. Thank you.
19 I -- I can report, as can Ms. Koenig, that the -- there is a
20 form of lease that has been negotiated for many months. It is
21 in a substantial form of completion. There are a couple of
22 issues that need to be ironed out. I think that at least from
23 the City's point of view, the development that Mr. Soong and
24 Mr. Sullivan have managed to make happen, that is the posting
25 of a million dollar deposit, is a tremendous step forward. I

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1 think that demonstrates to the community and hopefully to the
2 court as well, seriousness of the -- of the new tenant and the
3 state of play in terms of the cooperation going forward that
4 the City is also committed to.

5 I can also report that the City has been working on
6 the -- on a -- say a separate track, but say a para-- parallel
7 track in terms of moving forward on the necessary approvals and
8 community involvement events that need to happen in order for
9 this to be consummated. There is a scheduled -- an event, I
10 believe it's next week and then hopefully in several weeks
11 thereafter, the next step could be addressed as well. What are
12 the concerns --

13 THE COURT: What's that process? Is that like a
14 community board --

15 MR. KASS: Correct.

16 THE COURT: -- notice and hearing process? Or I don't
17 know if that counts as -- what's that acronym, ULURP or
18 whatever?

19 MR. KASS: Well, I -- it is not a ULURP -- it's not a
20 ULURP process, thank God, which is --

21 THE COURT: Okay.

22 MR. KASS: But, it does involve the -- the community
23 board. So there is a community board involvement and then
24 there is a bureau board involvement. Both of those things have
25 been -- have been heavily worked on and are on track. Again,

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1 one of the reasons that there has been some hesitation to
2 attempt to finalize the lease -- the format of the lease, is so
3 that the City can get whatever feedback is appropriate at those
4 hearings and incorporate whatever intelligence we can get
5 that'll make the community even more -- hopefully comfortable
6 with this path going forward. So it's our expectation that in
7 the event that we get those approvals, that the finalization --
8 if that's a word -- of the lease format will be fairly
9 straightforward and will be done fairly quickly. And at that
10 point, it can be filed with the court as part of the process of
11 confirming the plan.

12 Let's see, I -- was there -- were there other issues
13 that Your Honor would like the City to address?

14 I should also report that there have been discussions
15 with the Department of Finance about the pending proof of
16 claim. There is some flexibility, apparently, and there is a
17 review process that's going on right now. And it is our
18 expectation that there can be some resolution of that, which I
19 don't know whether it'll be necessary to involve the court's
20 approval, but it'll certainly be advanced enough so that
21 they'll be less uncertainty about that element in the plan.
22 The -- the U.S. Trustee included in their objection, a concern
23 about whether the City had committed to the provision of the
24 plan, which provides that the debtor -- I'm sorry -- the Bank,
25 the new tenant, and the City will share equally of expenses

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1 necessary to achieve consummation of the plan, and we have
2 clarified on behalf of the City, that the City has committed to
3 that. The mechanism of that will be out of the initial payment
4 that's to come from the new tenant to the City. Those funds
5 would be made available for that purpose and of course, the new
6 tenant would get, as it were, credit against the payment that's
7 going to the City for those purposes. So it should be that
8 that money -- it'll be clear that -- that those funds will be
9 available.

10 THE COURT: Okay. Yeah, the -- the finance piece that
11 you just talked about was the last piece that I wanted to hear
12 about so you anticipated the question I would have asked. I
13 think that's a good recap. I'm going to ask you the -- a
14 question you probably can't answer, which is how long will it
15 take for all these things to happen and then relatedly, at what
16 point in these ongoing City process -- processes, do you think
17 it's sufficiently reliable to go forward with (a) the
18 disclosure statement hearing and (b) confirmation?

19 MR. KASS: Well, I think the disclosure statement can
20 be, and should be, if Your Honor can accommodate it, can go
21 forward on one of the dates that you mentioned as being
22 available. So I think that would be the best way to approach
23 it. I think an answer to your first question, what is the
24 timing? The timing, as I say, is the community board,
25 hopefully, will be available next week, the bureau board, it's

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1 my understanding and maybe Mindy -- Ms. Koenig can correct me
2 if I misstate it, but it's my understanding that there is a
3 meeting in August -- or maybe it's July, I apologize, but it's
4 not far off. If we don't manage to get it on the bureau board
5 docket for that window -- I think they skip a month and then
6 the next one would be in April -- I'm sorry, in --

7 MS. KOENIG: September.

8 MR. KASS: -- in September.

9 THE COURT: Okay. Ms. Koenig's nodding, so --

10 MS. KOENIG: Yes.

11 THE COURT: -- that's fine. And I mean, I'm not
12 ruling on this, but I would guess that if you've got a baked --
13 a fully baked deal, subject to those community board and bureau
14 board hearing processes and approvals, that could be a
15 condition subsequent to -- that could even be a post-
16 confirmation matter -- I'm guessing, I don't know, that's --

17 MR. KASS: Yeah, I --

18 THE COURT: -- subject to everybody's input.

19 MR. KASS: I think that -- Your Honor, again, if we
20 can? Yes, I think that would be perfectly doable. It has
21 happened a couple of times in cases that the City has been
22 involved with. This is certainly a unique situation, but we
23 have requested of bankruptcy court that in all the
24 circumstances, that the bankruptcy process go forward and then
25 make it subject a contingent -- subsequent that the necessary

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1 city, state, or other government clearances are obtained while
2 those --

3 THE COURT: Right -- Okay.

4 MR. KASS: So that certainly works.

5 THE COURT: Okay, got it. And as far as you know, Mr.
6 Kass, the City is comfortable with identity of the tenant being
7 advanced and the basic structure of the plan?

8 MR. KASS: Yes, very much so.

9 THE COURT: Okay.

10 MR. KASS: We have -- the City and its business people
11 have had a continuing conversation with the proposed tenant.
12 And its business people and the lawyers have been in touch with
13 Mr. Soong, who's been extremely cooperative and helpful and
14 committed to moving things along on his side of the -- of the
15 fence, and it's been very helpful.

16 THE COURT: Okay.

17 MR. KASS: So the --

18 THE COURT: That's --

19 MR. KASS: He is --

20 THE COURT: That's great.

21 MR. KASS: -- is very supportive at this point.

22 THE COURT: Okay. So I think that's a pretty thorough
23 recap from the City. Just making sure, Mr. Kass, anything else
24 you want to add? I think that's a pretty complete report.

25 MR. KASS: No, Your Honor. Thank you for your

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1 indulgence.

2 THE COURT: Your welcome. Not -- it's not indulgence,
3 it was helpful -- very helpful to hear about it.

4 Okay, let me come back to Mr. Sullivan and just ask
5 you to add any information or any other points you want to
6 raise.

7 MR. SULLIVAN: Yeah, that -- I think that the primary
8 points and main points that I thought Your Honor would be
9 concerned about, the remaining points, I believe, is just
10 trying to address any remaining objections from the U.S.
11 Trustee's office. I did my best to address as many as I could
12 in the pleading we filed yesterday --

13 THE COURT: Right.

14 MR. SULLIVAN: -- and I guess I might throw ball if it
15 would be -- if it wouldn't be too forward to throw to Bruh's
16 court, to just kind of hear from him as to which --

17 THE COURT: Yeah, but I think -- I think that's fine.
18 Let me just -- yeah, let's just say -- oh, sorry did you
19 want -- I'm sorry to cut you off, Mr. Sullivan. Did you want
20 to raise particular things you were hoping to hear about?

21 MR. SULLIVAN: I'm wanting to hear whether or not --

22 THE COURT: From Mr. Bruh?

23 MR. SULLIVAN: I guess I first wanted to hear whether
24 or not the changes that (indiscernible) addressed any of the
25 concerns that Mr. Bruh raised in his objection, and hopefully

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1 they have. And then -- and then secondly, I guess I'd like to
2 see where we stand in terms of any remaining objections so at
3 least we can sort of figure out a path forward.

4 THE COURT: I got it. Okay.

5 So Mr. Bruh, I'm going to come back to you. Let me
6 say -- acknowledge that you're being asked questions about
7 information that just became available to you somewhere between
8 11:30 last night and real time during the hearing, so you're --

9 MR. SULLIVAN: Well, we could -- we could actually --
10 we did actually share it with him a little bit earlier than
11 that, it was still yesterday, but it was --

12 THE COURT: Ah-hah. Okay. So it became visible to me
13 then, I don't what your conversation's been. Bottomline, Mr.
14 Bruh, I just don't want to unfairly put you on the spot and
15 demand definitive answers to the extent that's not possible,
16 but why don't you let us know, sort of where the U.S. Trustee's
17 office is in light of these new developments?

18 MR. BRUH: Thank you, Your Honor. Mark Bruh for the
19 United State Trustee. Subsequent to the filing of our
20 objection, I did reach out to Mr. Sullivan and Mr. Kass to have
21 a conversation, which we did last week, to go over the points
22 in our objection. And I think the objection could be broken
23 down to a -- kind of three categories that I would call like
24 the low hanging fruit, which is the late filed claims,
25 reporting duties, and payments of the statutory fees, which is

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1 reflected in the redline disclosure statement and plan that was
2 filed. And that seems to take care of those objections.

3 I would point out, I did have an opportunity this
4 morning to look at the final decree and there seems to be some
5 contradiction as to who will be submitting it. In one
6 paragraph, it's the debtor and in one paragraph, it's the plan
7 administrator. I think which would be duty of the plan
8 administrator, and that should be clarified as well. But
9 those -- those are the easy things, Your Honor.

10 Then there was some issues to be clarified and the
11 City did say that they would be contributing a one-third share,
12 along with the Bank and the approved new tenant to pay the
13 administrative and tax claims. We're pleased to hear that
14 because that would -- that would resolve an objection as to the
15 financing of the plan. I guess my concern would be that the
16 plan in this amendment doesn't state that. I know Mr. Kass has
17 told me that and stated it in his objection to our -- reply to
18 our objection, so perhaps that can just be clarified in the
19 disclosure statement, then plan, as well.

20 THE COURT: Yeah. Let me -- let me jump in before I
21 lose that thought, Mr. Bruh, and just say -- I mean, so far
22 nothing has bumped me off the idea that I should push this
23 hearing out modestly, so -- a small amount so that momentum
24 isn't lost, but enough to fix things and I think that issue you
25 raised is important and should and can be nailed down in that

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1 time frame and so that we can have, possibly, a further amended
2 disclosure statement that eliminates that uncertainty.

3 It sounds like orally we're there, so that's going to
4 be -- I think the debtor would like to just submit that post-
5 hearing with a -- with a language tweak, but I'd feel better
6 laying eyes on before I bless the whole enterprise or -- or
7 before we do it on an order basis. That's also just better --
8 more in keeping with letting interested people have notice of
9 what's happening before last minute tweaks going into an order.
10 Okay?

11 Does that make sense to you, Mr. Bruh?

12 MR. BRUH: Yes, that's fine, Your Honor. I -- like I
13 said, I appreciate the clarification by Mr. Kass, as well as
14 Mr. Sullivan, regarding these issues. I would point out, I'm
15 just a little unclear as to when the Bank will be paid -- I
16 mean, not the Bank, excuse me, the City will be paid? I know
17 the Bank will be paid -- there's a paragraph regarding it. The
18 City is like sometime in the future. So if that could also be
19 hammered down in any sort of amendment to provide clarity
20 because obviously, the Bank is going to be funding payments of
21 claims in the case and I just want to make sure we don't have
22 an issue of not paying the taxing authorities under those
23 statutory scheme of five years from the order of relief in this
24 case.

25 THE COURT: Okay.

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1 MR. BRUH: Because (indiscernible).

2 THE COURT: So -- thank you. Yeah, I would just say,
3 it's good for you to raise them -- you're punch list items now
4 and then I would hope and expect you and the Bank team, can --
5 can hash these through and come up with ways to address and fix
6 your concerns like this. They sound sort of largely
7 informational or maybe points that require buttoning down deal
8 terms, just so that we have definiteness looking ahead.

9 MR. BRUH: Your Honor, just two final points as our
10 remaining objections, and this is where I -- we were at an
11 impasse with Mr. Sullivan and his client and I don't know if
12 that's a disclosure statement or a plan issue, at least with
13 respect to exculpation, it is, but we have a difference of
14 opinion as to what is a proper exculpation clause --

15 THE COURT: Yep.

16 MR. BRUH: -- in this case. And we also have a
17 difference of opinion regarding the payment to the Bank and we
18 believe it should be a 503(b) claim because it's -- and there
19 should be a proper application put before the court.

20 THE COURT: Okay, got it.

21 MR. BRUH: And if you want an argument today on that
22 or we can punt that to the 29th or some other date when we're
23 happy to have further discussions with Mr. Sullivan regarding
24 it, but that -- I think those two issues on our side and I
25 think with Mr. Sullivan, would be the elephant in the room to

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1 finally getting this plan to the -- across the finish line.

2 THE COURT: Okay, well talk -- I would say, again,
3 talk it through promptly as -- in a run up to and resumed
4 hearing date. I will say if -- I haven't -- if we were doing
5 full argument, I would ask you if the exculpation objection is
6 just of the sort that the U.S. Trustee brings as a programmatic
7 positional matter, that it's not limited to fiduciaries. I did
8 see it -- it seems to be limited to the conduct of the case and
9 its confined to conduct between -- I believe it's the petition
10 date and the effective date of the plan so it doesn't have
11 after effect.

12 If it's just the fact that it might apply to persons
13 beyond fiduciaries, I have ruled on that. I am comfortable
14 hearing that at a renewed hearing and I think, as you know, I
15 generally have not sustained the Trustee's objection on those
16 issues, right? So if there are other issues beyond the sort of
17 programmatic consistency position the Trustee raises, let me
18 know. Is there anything more than beyond that sort of issue?

19 MR. BRUH: We -- with respect to the temporal scope,
20 it is included there, that was not an objection raised by the
21 United States Trustee, the fiduciaries were. There's some
22 overly broad terms as to the administration process as opposed
23 to actual plan confirmation, track 1125, we have a difference
24 of opinion regarding the inclusion of a citation to the New
25 York Rules of Professional Conduct, Rule 1.8, which I believe

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1 Your Honor has approved in plans in the past and other judges
2 in this court, and we would just ask to have that.

3 THE COURT: Okay.

4 MR. BRUH: We did ask -- just two more bullet points,
5 Your Honor, so the court can know what's on our radar and what
6 I did discuss with Mr. Sullivan, would be a governmental carve
7 out, to the extent that we butt heads on that, I think that if
8 you carve out criminal acts, that would be satisfactory and
9 then we believe that advice of counsel is an affirmative
10 defense, which would not be in the exculpation clause.
11 There -- all these points were in our objection and as Your
12 Honor did state, they're rather routine by the United States
13 Trustee.

14 THE COURT: Okay. So let me -- here's what I would
15 say with regard to that.

16 Mr. Sullivan, you don't have to argue it, I'm just
17 going to give you some guidance and it's going to boil down to
18 talk among yourselves, agree to as much as you can, and then
19 I'll hear argument with respect to anything that remains. I
20 haven't fully -- I'm not ruling, I will say I have not adopted
21 what I think is an incorrectly narrow assessment of the
22 permissible range of parties who can be covered by exculpation
23 clauses and/or maybe scope of activities, and so that's a fight
24 that I know the U.S. Trustee's office needs to wage as a matter
25 of national policy, but I'm not -- prior rulings, I haven't

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1 fully endorse their view. That's not to say it's completely
2 wrong, and I have -- I'm not up to speed enough to say whether
3 there's something that I think is overbroad with the
4 exculpation language here, but that's just something I'll be
5 ready to rule on. See if you can narrow your gaps.

6 I do -- I am accustomed to seeing exceptions to
7 exculpation for violation of ethical rules. I'm not sure about
8 the particular wording or provision invoked, that's
9 certainly -- if that's acceptable to the plan proponents, that
10 gives me comfort, otherwise I have to think pretty hard about
11 that because I am certainly used to seeing that and I'm not
12 sure what the basis is to exculpate unethical conduct by
13 attorneys, but if you want to push on that, I'll consider it.

14 I think same goes for the government -- I think what
15 Mr. Bruh called the government carve out or the criminal act
16 carve out. I'll just see where you get on that and I'll rule
17 if I need to after hearing from you.

18 I'm not going to touch the advice of counsel issue he
19 raised because I don't have formed -- well-formed thoughts on
20 that, so I will stand -- so just stand by.

21 I think all of these sound to me like things that can
22 be litigated and the parties probably can live with whatever
23 answer I give you ultimately, so I think that's all we need to
24 do now.

25 And then, let me say also, Mr. Bruh, you mentioned

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1 that your view or Trustee's office's view that payment to the
2 Bank should be treated as a 503(b) claim and I'll just -- I'm
3 not going to sort of comment on that because I'm not ready to,
4 so I'll just see where you get on that. Okay?

5 Any other issues that you think should be raised, Mr.
6 Bruh?

7 MR. BRUH: I would just say thank you for the
8 indulgence, Your Honor, for letting us preview this. I feel I
9 put everything in the objection, I think these are the issues,
10 I think all the parties are aware of the issues, and if we --
11 Mr. Sullivan and I can resolve it beforehand, I think we'll
12 both -- like Your Honor said, we'll let the court decide.

13 THE COURT: Okay, that's fine. And I -- so it seems
14 to me that -- again, I'll say that was -- thanking me is
15 definitely not needed, I mean, I think it's very productive to
16 get everyone together to get on my -- call to my attention what
17 the issues are and let everyone hear each other and if I have
18 any reactions that might be helpful, I can give them, but if
19 nothing else, we're talking.

20 Okay. And, Mr. Bruh, does it make sense to push the
21 hearing back a little from your point of view just to permit
22 further progress as well?

23 MR. BRUH: We have no objection to that. I think --
24 I'm sure Mr. Sullivan and Mr. Kass would probably want the
25 earlier date than the later date. I'm available --

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1 THE COURT: Yeah, my -- my clerk just gave me a
2 note -- my staff just gave me a note saying use 7/6, 29th is
3 busy.

4 MR. BRUH: Oh.

5 THE COURT: So I think you can -- you can get a date.
6 I do continue to think there's so many moving pieces that it's
7 going to be better to push back. I will say it sounds --
8 having heard from Mr. Bruh in some detail, that the -- you're
9 very close to having something that meets their concerns about
10 just quantity of information, description of the deal, nailing
11 down deal terms, and describing financing terms and
12 commitments, including resolution with the City. I think that
13 should be disclosed up front in a disclosure statement because
14 I think creditors really -- and anybody else following the
15 case, just need to understand what the deal is and right now I
16 think the papers are a little shy of achieving that, but it
17 sounds like you're on the cusp of being there. So I think
18 we'll -- I think we'll probably be okay.

19 Mr. Sullivan, I will give you a chance to push back if
20 you think -- or Mr. Soong, for that matter, the two deal
21 proponents. I'm sensitive that I'm yet another agent of delay
22 in you doing what you want to do. Although it sounds like
23 maybe with the City process, this will end up not actually
24 costing you time, but -- so what do you -- what do you want to
25 say, if anything, further, Mr. Sullivan?

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1 Or go ahead, Mr. Soong, yeah.

2 MR. SOONG: Yeah, this will be quick. I did want to
3 confirm everything that Mr. Kass has said about the procedures
4 that are going on with my client and the City. There is a
5 community board meeting that is scheduled for next week, I
6 think on a Tuesday. I also just wanted to add that I have
7 committed to continue to work with all the City attorneys to
8 make sure that the process, which is still a little foggy to
9 me, but that the City process for approval kind of goes
10 smoothly. So I've gotten to know them better than I thought I
11 would, but we will -- I will do everything I can to make sure
12 that we get through the process. I just wanted to mention
13 that.

14 As far as the dates, Your Honor. I -- I can be
15 available on the 6th for a little bit of time in the morning.
16 The 13th is actually a better date, but if -- if the parties
17 really want the 6th, then of course I'll go along, I'll just --
18 I'm just traveling that day, but I can probably make -- I can
19 probably be available whenever you schedule it.

20 THE COURT: Okay. Let me just say, you can -- so I
21 have a deal with my deputy who runs my calendar, that she's in
22 charge and I don't -- I don't fully commit to anything, so you
23 can quickly canvas among yourselves, pick an agreeable date --
24 yeah, I -- yeah, I'm -- I happen to be out the 13th, so I have
25 some time earlier that week, but bottom line, talk among

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1 yourselves and propose some mutually agreeable dates. It looks
2 like the 6th would work, but if people prefer another date, I
3 can try to make that happen. Just let us know what you're
4 looking for. I'm assuming -- yeah, the 11th is the next
5 available, viable date, I'm told. So I am assuming and trying
6 to be responsive to the hurry that the Bank of Hope says it's
7 in, but if you end up wanting to take longer, that's okay as
8 well. Just let me -- figure out what date you want and confirm
9 with Ms. Calderon, and then I'll ask you to just notice a
10 continuation of the hearing for then, okay?

11 All right, anything else, Mr. --

12 MR. SOONG: Just throwing out there, in terms of that
13 date, the 6th then is probably better than the 11th, so --

14 THE COURT: Okay.

15 MR. SOONG: -- if that provides any comfort to
16 everybody.

17 THE COURT: Okay, so just mutually confirm and then
18 contact Ms. Calderon and line up the 6th, and if you -- let's
19 see, I have a 10 o'clock existing calendar that isn't very
20 heavy, so you can be on that, but I can also give you a
21 individual time later in the day if you prefer, so just let us
22 know. Yeah, I don't even -- I don't like to be in the weed, so
23 you guys -- you all just work out whatever your proposal is,
24 but I -- I'm just letting you know whatever your time
25 preference is on the 6th can be accommodated, okay?

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1 Anything else, Mr. Soong, substantively?

2 Okay, I'm going to reiterate it's great to have you
3 here and see an actual, viable respective partner who's going
4 to put this facility to use and get it in order.

5 Okay, Mr. Sullivan, anything more you want to add?

6 MR. SULLIVAN: I think we covered all the main points,
7 Your Honor, and hopefully I'll be able to work out as many of
8 the remaining points with Mr. Bruh prior to the next hearing.

9 THE COURT: Okay, and anything else anybody else wants
10 to add? Okay, I see Ms. Keenan shook her no. I'm sensitive to
11 your plight here in the case and your client's plight, but I
12 think that it kind of is what it is at this point.

13 Okay, so let me just recap where -- what we're going
14 to do. I'll leave it to Bank of Hope to contact Ms. Calderon,
15 email's fine, just to firm up whatever time you want on the 6th
16 or otherwise and then file a notice of continuation of the
17 hearing, specifically on the Bank of Hope's motion for approval
18 of its disclosure statement. I'll encourage you to talk to all
19 the parties now, really, as soon as possible to nail down the
20 moving pieces and probably I would encourage filing a further
21 amendment that would address the objections raised. Meanwhile,
22 chambers will independently generate a simple order denying
23 debtor's competing motion to approve its disclosure statement
24 and belated plan and Mr. Bruh is going to provide me with a
25 simple proposed order denying the U.S. Trustee motion to

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1 convert, without prejudice to reinstatement, accompanied by
2 supplemental briefing if the U.S. Trustee's office determines.

3 And that's it. Finally, let me just ask or direct
4 that you all order the transcript. There's been a lot of
5 substance today that is going to be helpful and should be
6 memorialized. I'll leave it to you to figure out if you want
7 to do a cost split or who's going to take charge of that, but
8 somebody needs to order the transcript, okay?

9 I'll say, unless -- unless there's agreement
10 otherwise, I'll stick the Bank of Hope with the tab on that, I
11 guess, okay? So let's leave it at that.

12 Okay, I think that's all we need to do today. Anyone
13 have anything else?

14 All right, hearing nothing, thank you very much. Good
15 luck buttoning this all down. Congrats on the progress and I
16 will be seeing you soon. Take care.

17 MR. SOONG: Thank you, Your Honor.

18 MR. BRUH: Thank you.

19 MR. KASS: Thank you, Your Honor

20 (Whereupon these proceedings were concluded)
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24
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C E R T I F I C A T I O N

I, Sabrina Vincent, certify that the foregoing transcript is a true and accurate record of the proceedings.

Sabrina Vincent

Sabrina Vincent

eScribers

7227 North 16th Street, Suite #207

Phoenix, AZ 85020

Date: June 15, 2023

June 14, 2023

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